No. 87-1661

(4)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ASARCO INCORPORATED, CAN-AM CORPORATION, MAGMA COPPER COMPANY, AND JAMES P.L. SULLIVAN,
Petitioners,

vs.

FRANK AND LORAIN KADISH, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

AND

BRIEF AMICUS CURIAE OF CLINTON CAMPBELL CONTRACTOR, INC. d/b/a PHOENIX BRICK YARD

FRED H. ROSENFELD
Gust, Rosenfeld, Divelbess
& Henderson
3300 Valley Bank Center
Phoenix, AZ 85073-3300
(602) 257-7422
Attorney for Movant
Counsel of Record

May 25, 1988.

Hoppy

No. 87-1661

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ASARCO INCORPORATED, CAN-AM CORPORATION, MAGMA COPPER COMPANY, AND JAMES P.L. SULLIVAN,
Petitioners,

vs.

FRANK AND LORAIN KADISH, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

Movant, Clinton Campbell Contractor, Inc. d/b/a Phoenix Brick Yard ("Phoenix Brick Yard"), prays for leave to file the appended Brief Amicus Curiae in support of the Petition for Writ of Certiorari filed by petitioners.

Movant has petitioners' consent to file an amicus brief and it is herewith submitted to the Clerk of the Court. Respondents Kadish and defendant Arizona State Land Department have declined to consent.

MOVANT'S INTEREST

Phoenix Brick Yard is a 75-year old family-held corporation. It has no parent, subsidiaries, or affiliates. It owns 23 mining claims situated on state trust lands near Pantano, Arizona. The trust lands are part of "indemnity school sections," that were selected in lieu of sections that were "mineral" or otherwise had been federally preempted.

The mining claims were discovered and perfected by movant and its predecessors under Arizona's mining law, which is, and always has been, virtually identical to federal mining law, except in one respect.[1] The claims are embodied in four state mineral leases first issued in 1958, 1959 and 1961, for terms of 20 years each.

Phoenix Brick Yard holds state mineral leases in Arizona. It did not appear in the action below.

In 1984, in *Tanner Companies v. Arizona State Land Department*, 142 Ariz. 183, 688 P.2d 1075 (Ariz. Ct. App.), the Arizona Court of Appeals reversed an administrative order of the Arizona State Land Department. The Department had determined that the nonmetallic Pantano clays being mined by Tanner and Phoenix Brick Yard under state mineral leases were not "minerals or mineral compounds," but were "common mineral materials." Therefore, the leases were subject to sale or disposition only after notice and at

---

[1] Federal mining law has been codified in the Territory and State of Arizona since at least 1901 (Ariz. Rev. Stat. § 3231 *et seq.* (1901), presently Ariz. Rev. Stat. §§ 27-201 through 222). Arizona's statutes pertaining to the discovery, location, and leasing of mining claims on state lands are found in Ariz. Rev. Stat. §§ 27-232 through 238. These statutes incorporate by reference and parallel the laws of the United States, but instead of providing for a patent, as does 30 U.S.C. § 29, they provide that a mining claim locator *"shall have a preferred right"* to a 20-year mineral lease and *"shall have a preferred right to renew the lease,"* if he has complied with its terms and "is not delinquent in the payment of rental or royalty." Ariz. Rev. Stat. § 27-233.

public auction, like timber, sand, gravel, common clay and other natural products appearing on the surface of state trust lands. The Court of Appeals disagreed, holding that Pantano clays are valuable "clay minerals," subject to location and mineral leasing. *Id.* at 192, 688 P.2d at 1084. If Phoenix Brick Yard were deprived of the use of these minerals, it "could not stay in business." *Id.*

Thereafter, the four mineral leases were renewed for 20-year terms expiring in 1998, 1999 and 2001. They are subject to the royalty requirement ("five percent of net value of the minerals produced from the claim") prescribed by Ariz. Rev. Stat. § 27-234B. But if this royalty were doubled, as suggested by the legislative obiter of the Arizona Supreme Court; or even increased tenfold, the leases still would be "null and void" under the Arizona court's decision.

If the lower court has correctly interpreted the relevant federal statutes, not only are movant's leases null and void, so also are hundreds of other state mineral leases held by the class defendants below. Moreover, if the Arizona court has correctly interpreted federal law, every existing lease issued pursuant to Arizona's mineral leasing law was issued in breach of the trust imposed by Congress in Section 28 of the Arizona Enabling Act. This is so because Arizona law never has required that mining claims and mineral discoveries on state trust land first be "appraised at their true value" before being "offered" for mineral lease and thereupon leased at not "less than the value so ascertained."

GROUNDS FOR MOTION

The Petition for a Writ of Certiorari should be granted. It demonstrates that the Arizona Supreme Court has erroneously construed the Arizona Enabling Act of June 10, 1910, Pub. L. No. 219 (ch. 310), 36 Stat. 557, 568–79, and the Act of Jan. 25, 1927, Pub. L. No. 570 (ch. 57), 44

Stat. 1026, codified as amended at 43 U.S.C. 870 (the so-called "Jones Act").[2]

The Arizona Supreme Court's decision (155 Ariz. 484, 747 P.2d 1183 (1987), ASARCO's Petition, Appendix A), without so stating, renders null and void Phoenix Brick Yard's state mineral leases, as well as hundreds of other state mineral leases held by other lessees.

The reach of the decision far exceeds its stated grasp. Facially, it holds only that a subsection of a single statute (Ariz. Rev. Stat. § 27-234B) violates § 28 of the Arizona Enabling Act (36 Stat. 557, 574–75) and Article 10 of Arizona's Constitution. Its legal and practical effects, however, are to scrap Arizona's mineral leasing law, to void all leases issued under that law, and, except as to oil and gas exploration, to jeopardize future mineral exploration and prospecting on Arizona State trust lands.

The court's strained construction of § 28 of Arizona's Enabling Act, as it was enacted by the Congress in 1910, and as presently amended,

- Is contrary to Congress' intent, if the language of the 1910 Act is given its ordinary meaning;
- Ignores and obscures the economic necessities of prospecting and exploring for subsurface deposits of valuable ores and minerals and of developing them after discovery and location;
- Disregards the clear meaning and intent of the Jones Act, and treats this enactment as a mere "amendment" to the Arizona Enabling Act;
- Offends the national mineral policy as expressed by Congress from 1872 to the present; and

---

[2] The bill (S.B. 564) offered by Senator Jones was amended in the House by striking all of its provisions after the enacting clause (68 Cong. Rec. 2581 (1927)). The court below nevertheless refers to this legislation as "the Jones Act." Movant will do so for consistency.

- Overlooks the correct and consistent constructions placed on § 28 by the People of Arizona and its Legislature since 1915.

The Petition for Certiorari correctly analyzes the Enabling Act and the Jones Act, and fully addresses the actual holding of the Arizona decision. The state court's holding appears to have been reached in a judicial vacuum. Because the decision *itself* fails to consider, and in fact obscures the legal and practical results that inevitably will follow if it is permitted to stand, the grounds noted above should be considered by the Court. Some of these grounds are not discussed by the Petition and others merit fuller discussion, which would aid the Court.

Permitting movant to file the appended Amicus Brief would allow movant to protect its vital interests and property rights and to advance different reasons showing that a writ of certiorari should be granted.

Respectfully submitted,

Fred H. Rosenfeld
Gust, Rosenfeld, Divelbess
& Henderson
3300 Valley Bank Center
Phoenix, AZ 85073-3300
(602) 257-7422
Attorney for Movant

May 25, 1988

Table of Contents

Table of Authorities

No. 87-1661

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ASARCO INCORPORATED, CAN-AM CORPORATION, MAGMA COPPER COMPANY, AND JAMES P.L. SULLIVAN,
Petitioners,

vs.

FRANK AND LORAIN KADISH, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona

BRIEF AMICUS CURIAE OF CLINTON CAMPBELL CONTRACTOR, INC. d/b/a PHOENIX BRICK YARD

Movant, Clinton Campbell Contractor, Inc. d/b/a Phoenix Brick Yard ("Phoenix Brick Yard"), submits this Brief Amicus Curiae in support of the Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona filed by ASARCO Incorporated, Can-Am Corporation, Magma Copper Company, and James P.L. Sullivan.

By the 1910 Enabling Act, Arizona, like other western land-grant states, was organized and admitted "on an equal footing" with existing states.

Out of each 36-section township of federal land, Congress granted Arizona sections 2 and 32, and confirmed the prior territorial grant of sections 16 and 36. From the

grants, however, Congress specifically reserved all of said sections "or any parts thereof, [that] are mineral." Thus, contrary to the analysis of the Arizona court, Congress expressed no "intent" whatsoever in the 1910 Act as to any Arizona mineral leasing scheme.

Arizona's Enabling Act, like others, provided that the lands granted or confirmed to the state "shall be by said State held in trust, to be disposed of in whole or in part only in the manner as herein provided." The Act also provided that sales, leases or other disposals not made in conformity with its provisions constitute a "breach of trust"and are "null and void."

For convenient reference, relevant portions of the Arizona Act are reproduced as Appendix ("App.") 1 hereto. As enacted, Section 28 of the Act contained 10 unnumbered paragraphs. These paragraphs have been numbered for discussion purposes. The crucial paragraphs here involved are those numbered 3 and 4. (App. 1 hereto, pp. 2a–3a.)

The Arizona court has seriously misconstrued the plain and unambiguous words of paragraphs 3 and 4 of Section 28.

REASONS FOR GRANTING THE WRIT

The Appraisal, Advertising and Auction Requirements of Section 28 Are Not and Never Were Applicable to Short-Term Leases.

The foundation of the Arizona court's holding is the court's erroneous conclusion that Congress intended in 1910 that Arizona leases of state land for terms of "five years or less" (par. 3), "before being offered, shall be appraised at their true value" and that no "disposal [lease] thereof shall be made for a consideration less than the value so ascertained." (Par. 4) If this was not the intent of Congress, the major premise of the lower court's holding is invalid and its decision cannot stand.

The lower court ascribes this 1910 intent to Congress to avoid the obvious meaning and effect of the 1927 Jones Act. From this presumed Congressional intent, the Arizona court concludes that Congress authorized each of the other ten western land grant states to lease the granted mineral deposits "as the State legislature may direct," but deliberately withheld this power only from Arizona. If the Arizona court has misapprehended the 1927 intent of Congress, its decision must fall.

In 1936, Congress struck the proviso of the third paragraph of Section 28 of the 1910 Act:

> "~~*Provided*, That nothing herein contained shall prevent said proposed State from leasing any of said lands referred to in this section for a term of five years or less without said advertisement herein required.~~"

The following proviso was substituted:

> "*Provided*, That nothing herein contained shall prevent said State of Arizona from leasing in a manner as the State legislature may direct, any of said lands referred to in this section for grazing or agricultural purposes for a term of ten years or less, and from leasing any of said lands for mineral purposes . . . for a term of twenty years or less." 49 Stat. 1477, 1478 (1936).

The part of the fourth paragraph of Section 28 of the 1910 Act quoted below has not been amended. The crux of this paragraph reads:

> "All lands, leaseholds, timber, and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained. . . ."

The lower court obviously read the fourth paragraph as a free-standing provision not *pari materia* to paragraph 3. The court's conclusion that the third and fourth paragraphs are not interrelated is unsound and unreasonable. For example, why would Congress exempt short-term leases from the cumbersome and expensive advertising and auction requirements, but require them to be appraised? Because the fourth paragraph specifically requires "leaseholds" to be appraised, it is apparent that Congress intended the appraisal and advertising requirements not to apply to short-term leases.

The simple and practical explanation for exempting short-term agricultural and grazing leases from Section 28's appraisal, advertising and auction requirements was that, in Arizona and many of the new western states, farming and cattle raising were principal industries. Farmland and grazing land possessed market rental values that were commonly known. The most likely reason for exempting 20-year mineral leases from the appraisal and other requirements is that Congress, unlike the court below, recognized that unpatented mining claims and unexploited mineral deposits are not capable of appraisal at "true value" before mining production begins.

The words "herein contained" in the proviso of the third paragraph appearing in *both* the 1910 and 1936 statutes must be applied to Section 28 *in its entirety*. Any other construction is nonsensical.[1] If the Arizona court's interpretation were applied to this and similar terms that appear

---

[1] Beginning with Section 19, and throughout the Arizona portion of the 1910 Enabling Act, Congress used the words "herein contained," "herein provided," "hereinbefore provided," "herein" and "contained." If these words and references are fairly read, they often apply to the entire Act. In some instances they refer to subjects (*e.g.*, elections) that are covered in several sections. In *every instance* they apply or relate to the section of the Act in which they appear. In *no instance* can their meaning be logically or reasonably confined to a single part or unnumbered paragraph of a section. Yet, the lower court has rigidly restricted the meaning of "nothing herein contained" in the third paragraph to that paragraph *only*. The very same proviso says that short-term leases may be made "without said advertisement herein required." From this usage, the lower court could as logically have concluded that, while Congress intended that "advertisement" was unnecessary as to short-term leases, they nevertheless must be sold at public auction. This would make no sense at all because Congress used the word "advertisement" as a shorthand way of describing the mechanics of offering and selling trust assets.

in other sections of the Act, these sections would be rendered meaningless.

The court's construction ignores a fundamental tenet of statutory construction applicable in both Arizona and federal courts: Courts will avoid statutory interpretations that lead to absurd results, which could not have been contemplated by the legislature. *United States v. Turkette*, 452 U.S. 576, 580, 101 S. Ct. 2524, 2527 (1981); *Smith v. Pima County Law Enforcement Council*, 113 Ariz. 154, 157, 548 P.2d 1151, 1154 (1976). For example, the words "in the manner as *herein provided*" in the first paragraph of Section 28, would have no effect if application of the words were confined to that paragraph and not carried down and applied to the third and fourth paragraphs. Similarly the "nothing herein contained" clause of the tenth paragraph would be idle if it were restricted to that paragraph and not related back to all parts of Section 28.

The Arizona court has restricted the application of the *"nothing herein contained"* proviso of the third paragraph to *that paragraph only*. This strained construction requires the bizarre conclusion that, while paragraph 3's "advertisement," "publication" and "auction" requirements apply to all dispositions other than short-term leases, short-term leases still must be appraised.

The meaning and purpose of paragraph 4 are clear from the paragraph itself. The requirement of appraisal of lands (including long-term leaseholds), timber, stone and any other "natural products" of the land, is but a step in

the process of "*offering*" the property as set forth in paragraph 3. Appraisal is merely part of the "advertisement" referred to in the 1910 Act. This was a way to describe the procedure for sale or disposition.

It would be highly imprudent, if not a breach of trust, to fully comply with the elaborate notice, publication, auction, and other sale and disposal requirements of the third paragraph, and then to conduct an auction of a parcel of land or tract of timber without any knowledge or opinion as to the value of the property being auctioned. The use of the words *"before being offered"* in the fourth paragraph necessarily relates back to the words *"offered"* and *"so offered"* as these words appear and are used in the third paragraph.

The lower court's opinion attempts to create a one-way street, when Congress intended that traffic should move in both directions. This result should not be permitted to stand.

By the 1936 amendment of the third paragraph, Congress not only lengthened the five-year lease term, it also specified particular leasing purposes, implying that leases for other purposes, such as business or commercial leases, would continue to be subject to all of the requirements of Section 28, including the appraisal requirement. The short-term leasing authority granted in 1910 was vested generally in the "State." In 1936, Congress specifically confirmed the power to lease in any *manner "as the state legislature may direct."* Significantly, Congress chose the indentical words that it had used in the 1927 Jones Act to vest plenary power in the western states to lease the minerals granted by the Jones Act.

The Arizona Court's Decision Not Only Disregards the Meaning and Intent of the Jones Act, It Also Creates Mineral Resource Management Difficulties in Arizona that are Far More Serious than Those Which Initially Prompted Enactment of the Jones Act.

The 1927 Jones Act was the first Congressional authorization for Arizona and the other ten western land grant states to lease mineral deposits. 44 Stat. 1026–27, Petition Appendix E.

When it enacted the Jones Act, Congress intended, and so avowed in its proceedings, to place these states on an equal footing *inter se*, and with the other land grant states. Subject only to then-existing mining claims and other outstanding claims and rights, Congress transferred sovereignty over mineral lands and rights to these eleven states with plenary leasing power.

Congress envisioned that each state would adopt a mineral leasing and royalty regime, because it forbade the states to sell or patent "coal and other minerals," and broadly granted each state the power to lease "coal and other mineral deposits . . . as the State legislature may direct."

Congress also required that the "royalties" from mineral leases *must* be "utilized for the support or in aid of the common or public schools." The Arizona court treats the words last quoted as redundant. It looks instead to the third and fourth paragraphs of Section 28 of the 1910 Enabling Act to derive the 1927 intent of Congress with respect to mineral leasing. The court also reads and repeatedly characterizes the Jones Act as a mere "amendment" to the Arizona Enabling Act. (747 P.2d at 1189, 1190.)

Through its tortured construction of the third and fourth paragraphs of Section 28 of the 1910 Act (which had nothing whatever to do with minerals or mineral leases),

the Arizona court rejects the Jones Act's grant of sovereignty and subverts the intent of Congress to place the states on an "equal footing." In doing so, the court inserts a banana peel under one of Arizona's feet.

Within a few years after Arizona and New Mexico were admitted to statehood in 1912, it became apparent that the severance and federal reservation of the mineral estate from the lands granted to the eleven states affected by the Jones Act, was engendering uncertainty, disputes and litigation. By 1927, Congress and the federal agencies and officers charged with administering the mining laws and managing the reserved minerals on land owned by these states and their grantees realized that the system was troublesome and inefficient.

The root cause of the title disputes, uncertainties, and problems that arose from dual sovereignty and separate management of the surface and mineral estates was the difficulty of determining which of the previously granted sections was "mineral" or "mineral in character." Often it was simply impossible to make this determination until mining operations were successfully undertaken and paying quantities of minerals were recovered.

The Arizona court, on the one hand, acknowledges and carefully outlines these problems, dilemmas and uncertainties that came to light only upon "subsequent mineral discovery." (747 P.2d at 1187.) On the other hand, the Arizona court's decision turns the clock back a century by simply assuming that the state's engineers or mineral appraisers somehow can determine the "true value" of a located but unproven mining claim, or an unmined subsurface mineral deposit, before they are offered for lease; whereas their counterparts in prior generations were unable even to determine grossly whether or not land was mineral in character.

Obviously the Arizona court must have presumed that *someone* would expend the necessary thousands or millions of dollars and do the required discovery and exploration work to permit the state's mineral appraiser to determine, in advance of leasing, the "true value" of a mineral claim or deposit. This "*someone*" would have to be a state agency, because even the most daring private entrepreneur would not be reckless enough to devote such efforts and expenditures on state trust land for the privilege of attending a public auction where he could be deprived of the fruits of his efforts. This is particularly true if the entrepreneur also would face the forfeiture of his labor and expenditures.

Section 28 of the Arizona Enabling Act and its cognate Arizona provision (Arizona Constitution, Article X, Section 10) are written to provide that "lessees" and even "former lessees" are "protected in their rights to their improvements" on state land. Assuming *arguendo* that holes in the ground left by core drilling or stripping, or computer sheets reflecting seismic or sonic exploration and showing geologic anomalies or ore bodies, could be classified as "improvements," the locator or owner of mining claims on state land *is not a lessee* regardless of how much he may have invested in discovery, location or exploration costs.

Prospectors and mineral explorers will shun Arizona's trust land for federal land, where they can receive a patent, or for land in other states or jurisdictions where they can avoid the guesswork of a predevelopment appraisal and where their genius, industry and expenditures guarantee them a mineral lease rather than the right to attend a public auction of their own mining claims.

The "appraisal at true value" requirement erroneously imposed by the lower court on mineral leases and other short-term leases would be impractical, and unworkable and, indeed, actually harmful to the trust, even if the third and fourth paragraphs would tolerate the interpretation placed on them by the lower court.

If this Court should agree with the lower court that the 1910 intent of Congress was to exempt short-term leases from all of Section 28's sale and disposal requirements except appraisal, that intent cannot apply to mineral leases. To so apply it would frustrate the very purpose of the Jones Act. Arizona would be singled out for disparate and harmful treatment simply because its own Supreme Court disagrees with the royalty rate that its legislature has set for mineral leases.

The Lower Court Misreads the 1927 Joint Resolution Affecting New Mexico and Misinterprets the 1936 and 1951 Amendments of the Arizona Enabling Act.

The Arizona court places undue emphasis on Joint Resolution No. 7, 45 Stat. 58 (1928), which gave effect to New Mexico's proposal to amend its Constitution to give the state broad latitude to enter leases and contracts "for the development and production of any and all minerals," including oil and gas. The language relied on by the lower court was written in New Mexico, not Washington. Similarly, the Arizona court reads into the language of the 1936 and 1951 Congressional amendments of the third paragraph of Section 28 of the Arizona Enabling Act meanings that could not have been intended.

A wildcatter or oil explorer in Roswell in 1927 would have been loathe to spend money to drill for oil on New Mexico trust land under a statute (the Jones Act) which permitted New Mexico to make leases "for coal and other mineral deposits."

There were wildcatters in Roswell in 1927. Unlike Arizona, New Mexico produces a substantial amount of crude oil and natural gas.[2] New Mexico's constitutional

---

[2] For the past several years it has annually produced more than

amendment permitting exemption of mineral leases from all "advertisement" requirements, including "appraisement," details the effect of the Jones Act more fully than the Act itself. But, it does not necessarily follow, as the Arizona court assumes, that Congress even considered the specific language of the Jones Act, much less the Arizona Enabling Act, when it approved New Mexico's proposal. It is just as logical to conclude that Congress acted out of courtesy rather than necessity.

Legislative bodies enact statutes one at a time. The elaborate motive and intent of Congress as to Arizona's Enabling Act that the lower court reads into its consideration of the New Mexico proposal is as speculative as the lower court's conclusion that when Congress passed the Jones Act it was as concerned about a mere proviso in the Arizona Enabling Act as it was with the Jones Act legislation.

The 1951 insertion into Section 28 of Arizona's Enabling Act of a provision allowing oil and gas leases to be issued *"with or without* advertisement, bidding, or appraisement" provides no support for the strained construction made by the Arizona court.

The 1951 amendment, according to its legislative history, was needed to remove perceived restrictions on oil and gas development and production. Arizona's oil and gas expectations are unrealized. There are no proven oil fields or producing wells on Arizona trust land. If a large oil and gas field were discovered and developed near Tucson, and it encompassed numerous state-owned sections, appraisal and the public auction of leases might well be required.

---

70 million barrels of petroleum and approximately 1,000 billion cubic feet of gas. *Statistical Abstract of the United States*, p. 644, Table No. 1172 (1988). Arizona, on the other hand, reports no production of oil or gas. *Id.* and *id.*, p. 657, Table No. 1156.

Negotiating a lease price, or even opening bidding at $1.00 for an oil and gas lease that is virtually certain to produce substantial oil or gas, would not only be contrary to the state's interest, but would very likely constitute a breach of trust.

The 1951 Congressional grant to Arizona of the option to issue oil and gas leases *"with or without"* appraisement, advertising or bidding provides no support for the Arizona court's decision. On the contrary it evidences the breadth of the power granted to the states to lease minerals. The 1951 amendment permits Arizona to promise oil and gas developers and lessees that they can retain a lease so long as production continues. The 1951 option, permitting the legislature to require or not require appraisement, advertisement and auction of oil and gas leases, could be very beneficial to the trust. It allows either exploration without advertisement and appraisal, or a full-blown lease auction if actual production is assured to the bidders.

The Arizona Court Overlooks the Legislative Construction Placed on Section 28 since 1915 and Ignores National Mineral Policy.

All Arizona courts, including its highest court, are bound by rules which provide that court's do not legislate and that a legislative construction is to be given great weight, *see, e.g., State v. Barnett*, 142 Ariz. 592, 691 P.2d 683 (1984), and that the purpose of statutory construction is to give effect to legislative intent. *E.g., Calvert v. Farmers Insurance Company of Arizona*, 144 Ariz. 291, 697 P.2d 684 (1985).

The lower court does not even mention the actions of the Arizona legislature in response either to the original Enabling Act and its amendments or to the Jones Act.

An examination of the act adopted by Arizona's legislature in 1915, Laws of Ariz., 1915, 2d Spec. Sess., Ch. 5

(*see* App. 2 hereto), reveals that the legislature well understood that Arizona was receiving and selecting land under the Enabling Act that was, in fact, mineral in character. This occurred in all the states, and stemmed from the difficulty or impossibility of determining the mineral character of land from a surface examination. This court addressed a phase of the problem in *Wyoming v. United States*, 255 U.S. 489, 41 S. Ct. 393 (1921).

By the 1915 statute, the Arizona legislature reaffirmed the federal procedure for locating mineral claims on state land, gave locators of claims preferred rights to lease, provided for five-dollars per claim, two-year leases, without advertising *appraisement*, and limited lease production to 50 tons of ore until a royalty contract was executed by the locator and the State Land Department.

Under the lower court's reasoning, Arizona's 1915 mineral leasing scheme, or for that matter a statute that authorized a five-year grazing lease without appraisement, would have violated the appraisement requirement of Section 28.

The 1915 statute was unchallenged until 1927. Shortly after the enactment by Congress of the 1927 Jones Act, the Arizona legislature also acted to accept the benefits of the Jones Act.

Though the purposes of the Jones Act were not recognized below by Arizona's Supreme Court, Arizona's 1927 legislature clearly apprehended the meaning and purpose of the Jones Act and immediately reenacted Section 38 of the prior 1915 enactment *in haec verba*. Laws of Ariz., 1927, 4th Spec. Sess., Ch. 29 (*see* App. 3 hereto). There could be no clearer evidence of the understanding and acceptance of Arizona's legislature that Congress intended by the Jones Act that "coal and other mineral deposits . . . *shall be subject to lease by the State as the State legislature may direct.*" No other explanation exists for the word-for-word reenactment of Section 38. *See* App. 3 hereto.

Unlike the 1927 New Mexico legislature, Arizona's 1927 legislature read the Jones Act as including the right to issue leases for *all minerals*, including oil and gas leases. The only changes it made in original Section 38 of the Arizona act (App. 2 hereto), were the addition of a new part (g) and the updating of a 90 day lease preference right in part (b).

By part (g) the legislature authorized oil and gas leases for renewable five-year terms, provided for a rental payment of 10 cents per acre, required a drilling program and specified a 12½ percent royalty on any oil and gas that was commercially produced. Once again, the Arizona legislature construed Section 28 of the Enabling Act as not requiring advertisement or *appraisal*. *See* App. 3 hereto.

The Arizona legislature's sensitivity to the need for mineral exploration and development is clear from its 1961 enactment providing for prospecting permits.[3]

Arizona's present mineral leasing law is set forth in Appendix 4 hereto for comparison purposes. The current perception of the Arizona legislature of the meaning and effect of both the Enabling Act and the Jones Act is clear from these statutes. Further evidence of its understanding of the Enabling Act is revealed by Arizona's statute relating to the disposition of common mineral materials and products. This act, first adopted in 1967, now appears in Ariz. Rev. Stat. §§ 27-271 through 275. The statute provides in part that no common mineral materials or products will be disposed of at "less than the true appraised value." The regulations supplementing the act permit disposal of common mineral products only at public auction.

---

[3] Ariz. Rev. Stat. §§ 27-251 through 256 provide for exclusive prospecting permits on state land for one-year terms, renewable for five years. This allows and encourages large-scale exploration and assures the prospector that he can obtain a state lease on any minerals discovered and developed within the permitted area.

The decision of the Arizona court affords no weight to almost a century of Arizona legislative history. The Congressional grant of leasing power was made to Arizona's legislature, not its courts, yet the court below does not discuss Arizona's own mining laws or consider the constructions placed on the relevant federal acts by its legislature. Neither does the lower court discuss or consider the national mineral policy.

A clear exposition of the early national mineral policy is set forth in H.R. Rep. No. 730, 84th Cong., 1st Sess. (1955). The report points out:

> "Mineral resource utilization comes about only after: (1) prospecting; (2) exploration; and (3) development.
>
> Historically, the Federal mining law has been designed to encourage individual prospecting, exploration, and development of the public domain. The incentive for such activity has been the assurance of ultimate private ownership of the minerals and lands so developed. Under these laws, prospectors may go out on the public domain not otherwise withdrawn, locate a mining claim, search out its mineral wealth and, if discovery of mineral is made, can then obtain a patent. The property, with issuance of patent, becomes the individual's to develop or sell, according to his initiative or desire."

Similarly, the Mining and Minerals Policy act of 1970, Pub. L. No. 91-631, 84 Stat. 1876 provides:

> "The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help

assure satisfaction of industrial, security and environmental needs, . . ."

House Report No. 91-1442, 91st Cong., 2d Sess. (1970) points out the need for a mineral policy.

> "There appears to be little argument about the need for a broad national minerals policy to guide both the Federal Government and private industry with respect to this Nation's long-range minerals position. Ours is more and more a mineral-based economy and whether viewed as a part of a peacetime economy or as a necessary mobilization base in times of emergency, the future well-being and national security of our Nation is directly tied to the supply and availability of minerals."

Any federal grant of school lands to the State of Arizona, must be viewed in light of the mining laws, the school land laws, and public mineral policy. *United States v. Sweet*, 245 U.S. 563, 38 S. Ct. 193, (1918) (where a statute granting school lands to Utah failed to state whether mineral lands were excepted, the grant had to "be read in the light of the mining laws, the school land indemnity law, and the settled public policy respecting mineral lands, and not as though it constituted the sole evidence of the legislative will." *Id.* at 563, 38 S. Ct. at 195.)

When Congress enacted the Jones Act and later amended Arizona's Enabling Act, it did so against the backdrop of the national mineral policy, which was and is to encourage and promote mineral exploration and production. The Arizona court apparently gave no consideration to this policy.

If mineral exploration and location on Arizona's trust lands are to be jeopardized, and if the essential purpose of Congress as expressed in the Jones Act and the amendments

to the Arizona Enabling Act is to be ignored, compelling justifications must exist. The tenuous reasoning of the Arizona court fails to provide these justifications.

CONCLUSION

For the foregoing reasons, and those stated in the Petition, the Petition for a Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

FRED H. ROSENFELD
Gust, Rosenfeld, Divelbess & Henderson
3300 Valley Bank Center
Phoenix, Arizona 85073-3300
(602) 257-7422
Attorney for Movant

May 25, 1988

Appendix 1

Excerpts from Act of June 10, 1910, 36 Stat. 557, 568, 572, 574 and 575. (Arizona Enabling Act)
Note: All underlining added.

"CHAP. 310. – An Act . . . to enable the people of Arizona to form a constitution and state government and be admitted into the Union on an equal footing with the original States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, . . ."

"* * *
* * *"

"SEC. 19. That the qualified electors of the Territory of Arizona are hereby authorized to vote for and choose delegates to form a constitutional convention for said Territory for the purpose of framing a constitution for the proposed State of Arizona. . . ."

"* * *
* * *"

"SEC. 24. That in addition to sections sixteen and thirty-six, heretofore reserved for the Territory of Arizona, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this Act are hereby granted to the said State for the support of common schools; and where sections two, sixteen, thirty-two, and thirty-six, or any parts thereof, are mineral, . . ."

[Selections in lieu of mineral lands authorized by Congress] (brackets added).

"* * *
* * *"

[par. 1] "SEC. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said Territory, are hereby expressly transferred and confirmed to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified. . . . and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

[par. 2] Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom . . . in any manner contrary to the provisions of this Act, shall be deemed a breach of trust.

[par. 3] . . . Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of the transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of such lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice by publication thus provided for sales and leases of the lands themselves: *Provided*, That nothing herein contained shall prevent said proposed State from leasing any of said lands referred to in this section for a term of five years or less without said advertisement herein required.

[par. 4] All lands, leaseholds, timber, and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained . . ."

"* * *"

[par. 8] "Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this Act shall be null and void, any provision of the constitution or laws of the said State to the contrary notwithstanding.

[par. 9] It shall be the duty of the Attorney-General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

[par. 10] Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen hereof to enforce the provisions of this Act."

For convenient reference, Section 28 of the Arizona Enabling Act of 1910, Pub. L. 219 (ch. 310), 36 Stat. 557, 574–75, is reproduced in its entirety as follows:

"SEC. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said Territory, are hereby expressly transferred and confirmed to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this Act, shall be deemed a breach of trust.

No mortgage or other incumbrance of the said lands, or any thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of the transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of such lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice by publication thus provided for sales and leases of the lands themselves: *Provided,* That nothing herein contained shall prevent said proposed State from leasing any of said lands referred to in this section for a term of five years or less without said advertisement herein required.

All lands, leaseholds, timber, and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor in any case less than the minimum price hereinafter fixed, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid.

No lands shall be sold for less than three dollars per acre, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre: *Provided,* That said State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such government project. And other lands in lieu thereof are hereby granted to said State, to be selected from lands of the character named and in the manner prescribed in section twenty-four of this Act.

There is hereby reserved to the United States and excepted from the operation of any and all grants made or confirmed by this Act to said proposed State all land actually or prospectively valuable for the development of water powers or power for hydro-electric use or transmission and which shall be ascertained and designated by the Secretary of the Interior within five years after the proclamation of the President declaring the admission of the State; and no lands so reserved and excepted shall be subject to any disposition whatsoever by said State, and any conveyance or transfer of such land by said State or any officer thereof shall be absolutely null and void within the period above named; and in lieu of the land so reserved to the United States and excepted from the operation of any of said grants there be, and is hereby, granted to the proposed State an equal quantity of land to be selected from land of the character named and in the manner prescribed in section twenty-four of this Act.

A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such

moneys was by this Act conveyed or confirmed. No moneys shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed. The state treasurer shall keep all such moneys invested in safe, interest-bearing securities, which securities shall be approved by the governor and secretary of state of said proposed State, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto, as defined by this Act and the laws of the State not in conflict herewith.

Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this Act shall be null and void, any provision of the constitution or laws of the said State to the contrary notwithstanding.

It shall be the duty of the Attorney-General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen thereof to enforce the provisions of this Act."

Appendix 2

Excerpts from Laws of Arizona, 1915, Second Special Session, Ch. 5.

"* * *
* * *"

Sec. 38. The department is hereby authorized to execute leases and contracts for the leasing of lands containing gold, silver, copper, lead or other valuable minerals, or for any land containing shale, slate, petroleum, natural gas, or other valuable natural deposits which the state now owns or to which it may hereafter acquire title.

(a) Any citizen of the United States finding valuable minerals upon any unsold lands of the state may apply to the department for a lease of any amount of land not to exceed the amount and dimensions allowed by the mining laws of the state and the United States.

(b) The manner of locating a mineral claim upon state land shall be in accordance with the law of the state regulating the location of mineral claims on government lands; provided, that any citizen or citizens who may have found minerals on unsold state lands previous to the passage of this act and posted notices in accordance with the mining laws of the State, and the United States, shall have preference right to lease the same, and shall have ninety (90) days after the passage of this act, in which to make application to the department for such lease.

(c) For the purpose of developing such mine or mines, the applicant shall, upon the payment of five (5) dollars per claim, receive from the department a lease for two years; provided, however, that no more than fifty tons of ore shall be removed from the premises for any purposes until a contract shall have been executed, as hereinafter provided.

(d) The lessee may cut and use the timber found upon said claim for fuel, and in the construction of buildings required in the operation of any mine or mines, on the claim; also the timber necessary for drains, tramways, and supports for such mine or mines, but for no other purpose.

(e) Any time prior to the expiration of said lease, the lease-holder, or any assignee thereof, shall have the right to obtain from said department a contract, which shall bind the State of Arizona, as a party of the first part, and the person, or persons, or corporation, to whom said contract shall issue, as party of the second part, in a mutual observance of such obligations, terms, and conditions as may be agreed upon by said department and the said lessee.

(f) Whenever any lessee of mining property shall be convicted of fraud or wilful misrepresentation in connection with the procuring of any such lease, or the handling or shipping of ores or other dealing with the product or proceeds of any property leased under the provisions of this act, the penalty shall be the forefeiture of the lease to any such mine or mining claim, and all improvements placed thereon, or used in connection therewith, and all property pertaining thereto and all moneys paid thereon and all rights, title or claim to any and all of said property shall be vested in the state without further or other procedure on the part of the state."

"* * *"

Appendix 3

Excerpts from Laws of Arizona, 1927, Fourth Special Session, Ch. 29.

"Be It Enacted By the Legislature of the State of Arizona:

Section 1. That Section 38 of Chapter 5 of the acts of the Second Special Session of the Second Legislature, State of Arizona, 1915, be and the same is hereby amended to read as follows:

Section 38. The department is hereby authorized to execute leases and contracts for the leasing of lands containing gold, silver, copper, lead or other valuable minerals, or for any land containing shale, slate, petroleum, natural gas, or other valuable natural deposits which the state now owns or to which it may hereafter acquire title.

(a) Any citizen of the United States finding valuable minerals upon any unsold lands of the state may apply to the department for a lease of any amount of land not to exceed the amount and dimensions allowed by the mining laws of the state and the United States.

(b) The manner of locating a mineral claim upon state land shall be in accordance with the law of the state regulating the location of mineral claims on government lands; provided, that any citizen or citizens who may have found minerals on unsold state lands previous to the passage of this act and posted notices in accordance with the mining laws of the state and the United States, shall have preference right to lease the same.

(c) For the purpose of developing such mine or mines, the applicant shall, upon the payment of five dollars per claim, receive from the department a lease for two years; provided, however, that no more than fifty tons of ore shall

be removed from the premises for any purposes until a contract shall have been executed, as hereinafter provided.

(d) The lessee may cut and use the timber found upon said claim for fuel, and in the construction of buildings required in the operation of any mine or mines, on the claim; also the timber necessary for drains, tramways, and supports for such mine or mines, but for no other purpose.

(e) Any time prior to the expiration of said lease, the lease-holder, or any assignee thereof, shall have the right to obtain from said department a contract, which shall bind the State of Arizona, as a party of the first part, and the person, or persons, or corporation, to whom said contract shall issue, as party of the second part, in a mutual observance of such obligations, terms and conditions as may be agreed upon by said department and the said lessee.

(f) Whenever any lessee of mining property shall be convicted of fraud or wilfull misrepresentation in connection with the procuring of any such lease, or the handling or shipping of ores or other dealing with the product or proceeds of any property leased under the provisions of this act, the penalty shall be the forfeiture of the lease to any such mine or mining claim, and all improvements placed thereon, or used in connection therewith, and all property pertaining thereto and all moneys paid thereon and all rights, title or claim to any and all of said property shall be vested in the state without further or other procedure on the part of the state.

(g) The department is hereby authorized to execute oil and gas prospecting leases which shall run for a term of two years and under which a rental of one hundred dollars shall be paid for each six hundred and forty acres for the two year term. The rental under a lease containing less than six hundred and forty acres shall be at the rate of twenty-five dollars for each one hundred and sixty acres or fraction thereof. Not exceeding two thousand five hundred and sixty acres shall be included in any one such prospecting

lease. A separate lease must be executed for each separate parcel or plot of land, and all lands included in any lease must be adjoining.

In the event lessee shall have started actual drilling for oil and is continuing same, prior to the expiration of the term mentioned in said lease, said lessee shall have the right of renewal, and, provided, that in the event oil or gas shall have been discovered to exist in commercial quantities on lands covered in such lease prior to the expiration of such lease, then and in that event, lessee shall have the right to, and the Department is hereby authorized and directed to issue to said lessee a development and operating lease upon said land which shall run for a period of five years and which upon expiration shall be renewable for succeeding terms of five years each provided, the lessee drill at least two wells, or that the second well is being drilled at the expiration of said lease. Said procedure to continue for each succeeding five year period until three wells have been drilled for each section of land included in the lease. Should the lease be for more than one hundred and sixty acres and less than six hundred and forty acres, the second well may be in the development state at the expiration of the original lease. Such renewals shall be subject to such terms and conditions as may be fixed by law, and the rules and regulations of the State Land Commissioner not in conflict with law. Provided, however, that the annual rental to be charged under the terms of such development and operating lease shall be ten cents per acre per year; and the royalty to be paid to the State of Arizona on the oil and/or gas commercially produced from the said premises under the prospecting and/or development and operating lease shall be twelve and one-half per centum of oil and/or gas produced from said land.

Section 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved November 15, 1927."

Appendix 4

Arizona's Current Mineral Leasing Law (Ariz. Rev. Stat. §§ 27-231-238)

"§ 27-231. Location of mineral claim on state land; definition

A. Any natural person over eighteen years of age and any other person qualified to transact business in this state who discovers a valuable mineral deposit on any state land may enter upon and locate the deposit as a mineral claim.

B. The term "mineral" includes mineral compound and mineral aggregate.

§ 27-232. Methods of locating claims; extent of extralateral rights

A. If the mineral deposit is a vein, lode or ledge, it may be located in the manner provided for the location of mineral claims upon the public domain of the United States. Upon obtaining a lease on land so located, as provided in this article, the lessee shall be entitled during the term of the lease to extralateral rights in the discovery vein only to the same extent as similar mineral locations upon the public domain of the United States under the provisions of Title 30, United States Code, section 26 (U.S. revised statutes, section 2322).

B. Any mineral claim, however, may be located in conformity with the lines of the public land survey, embracing not more than twenty acres. In such case the location shall be marked upon the ground by erecting a monument or placing a post extending at least three feet above the surface of the ground at each angle corner of the claim, as nearly as possible, and by placing in each monument, or on each post, a memorandum stating the name of the locator,

the name of the claim and designating the corner by reference to cardinal points, and within thirty days thereafter by filing for record in the office of the county recorder of the county in which the claim is located, a notice of location which shall set forth:

1. The name of the locator.

2. The name of the claim.

3. The date of location.

4. The legal description of the land claimed.

C. One copy of the location notice of any claim located pursuant to this section, together with the county recorder's certificate of recordation, shall be filed in the office of the state land commissioner within thirty days after the date of location.

§ 27-233. Preferred right of locator to lease land; discovery work; lease renewal

A. The locator of a lode mining claim or claims on state lands pursuant to this article shall have a preferred right to a mineral lease of each claim within ninety days after the date of location.

B. The locator of a lode mining claim located pursuant to § 27-232 shall be required to perform the discovery work required by law for mining claims under the laws of the United States within the ninety-day period or an equivalent amount of development drilling of a reasonable value of one hundred dollars on each claim. The development drilling may be centrally located and need not be upon each individual claim, but shall be so located as to be part of a plan of development for the group, and in no event shall the minimum requirement prescribed for each individual claim be dispensed with. The locator shall not receive a lease

unless he submits to the state land commissioner satisfactory proof of the performance of such discovery work within such reasonable time as the land commissioner prescribes.

C. Upon application to the commissioner, not less than thirty nor more than sixty days prior to the expiration of the lease, the lessee of mineral lands, if he is not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of twenty years.

§ 27-234. Rent; royalty; termination of lease by lessee

A. The rental for a mineral lease of state lands shall be fifteen dollars per annum, payable in advance at the time of application for lease and at the beginning of each yearly period thereafter.

B. Every mineral lease of state land shall provide for payment to the state by the lessee of a royalty of five percent of the net value of the minerals produced from the claim. The net value is deemed to be the gross value after processing, where processing is necessary for commercial use, less the actual cost of transportation from the place of production to the place of processing, less costs of processing and taxes levied and paid upon the production of the minerals. In case of minerals not processed for commercial use, the net value is the gross proceeds, or gross value, at the place of sale or use, less the actual cost of transportation from the place of production to the place of sale or use, less taxes, if any, levied and paid upon the production of the minerals. The lease shall not require the payment of any royalty in advance of actual production of minerals from the claim.

C. The lessee of any mineral lease may, if not delinquent in the payment of rent or royalty to the date of termination, terminate the lease at any time during its term by giving the commissioner thirty days' notice of termination in writing.

§ 27-235. Terms of lease

A. Every mineral lease of state lands shall be for a term of twenty years.

B. The lease shall confer the right:

1. To extract and ship minerals, mineral compounds and mineral aggregates from the claim located within planes drawn vertically downward through the exterior boundary lines thereof. In case of leases made pursuant to locations under subsection A of § 27-232, the lease shall confer extralateral rights in the discovery vein similar to those given locators upon the public domain of the United States under the provision of Title 30, United States Code, § 26 (U.S. revised statutes, section 2322).

2. To use as much of the surface as required for purposes incident to mining.

3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.

C. Every mineral lease of state lands shall provide for:

1. The performance of annual labor, as required by the laws of the United States, upon each claim or group of claims in common ownership, commencing at the expiration of one year from the date of location, and for furnishing proof thereof to the commissioner.

2. The fencing of all shafts, prospect holes, adits, tunnels and other dangerous mine workings for the protection of live stock.

3. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if all monies owing to the state under the terms of the lease have been paid.

4. The cutting and use of timber and stone upon the claim, not otherwise appropriated, for fuel, construction of necessary improvements, or for drains, roadways, tramways, supports, or other necessary purposes.

5. The right of the lessee and his assigns to transfer the lease.

6. Termination of the lease by the commissioner upon written notice specifically setting forth the default for which forfeiture is declared, and preserving the right to cure the default within a stated period of not less than thirty days.

§ 27-236. Suspension of royalty rights

The commissioner may, if he deems it in the interest of the state, subordinate the royalty rights of the state under this article, or suspend the operation thereof or of any lease executed under the provisions of this article, in favor of the United States or any agency thereof, for the purpose of facilitating extension of financial aid under the laws of the United States in the development or operation of any mine located upon state lands.

§ 27-237. Review by commissioner

All questions arising between a locator or lessee and the commissioner under this article shall be subject to review as in other cases involving state lands, and the locator's or lessee's right to possess and operate his claim shall continue until the question is finally determined.

§ 27-238. Existing leases

Every mineral lease in effect on June 16, 1941 under the provisions of § 2973, Revised Code of 1928, shall remain in effect for the unexpired term for which it was granted, without right of renewal, or, at the option of the lessee, may be superseded by a lease as provided by this article."